

REMARKS

Status of Claims

Claim 2-7 are cancelled without prejudice or disclaimer. Claim 1 is amended.

No new matter is introduced by virtue of the within amendments; support therefor can be found throughout the specification (e.g., pages 3-4) and original claims (e.g., claim 2).

Allowable Subject Matter

At the outset, Applicant appreciates the indication of allowable subject matter, i.e. that the "prior art of record did not disclose or suggest an isolated protein comprising the entire amino acid sequence presented in SEQ ID NO:2 or 4 of the instant application" (Office Action at page 7). Without acquiescing to the grounds for any one of the rejections, but in order to expedite allowance of the application, Applicant has amended the claims to recite that subject matter which is indicated as being allowable.

Information Disclosure Statement

A Supplemental Information Disclosure Statement is filed concurrently herewith. The Supplemental IDS cites four (4) documents which were stricken from two earlier Information Disclosure Statements filed on January 16, 2003 and February 28, 2003, respectively. Copies of two European Search Reports are also included since they refer to the relevance of the noted 4 documents. Additional information is included in the within IDS to facilitate the Examiner's consideration of same. Entry of the Supplemental IDS is requested.

Claims Rejections under 35 USC §112, 1st paragraph

Claims 1 and 2 are rejected under 35 USC §112, 1st paragraph, as allegedly failing to comply with the written description and enablement requirements. The Office Action asserts at page 2 that "[c]laim 1 encompasses any protein that might be encompassed by the limitation 'cerebral type organic anion transporter OAT3'. Claim 2

is essentially as broad....”.

Without acquiescing to the grounds for the rejection, Applicant has amended the claims to clarify the features of the invention and expedite prosecution of the application. As amended, claim 1 recites an isolated protein comprising the amino acid sequence represented by SEQ ID NO: 2 or SEQ ID NO: 4, subject matter which the Office Action acknowledges satisfies the requirements of 35 USC §112, 1st paragraph (Office Action at page 4, last paragraph).

Reconsideration and withdrawal of the rejection under 35 USC §112, 1st paragraph, are requested.

Claims Rejections under 35 USC §112, 2nd paragraph

Claim 1 and 2 are rejected under 35 USC §112, 2nd paragraph, as being allegedly indefinite. The Office Action points specifically to use of the term “organic anion transporter OAT3” in claims 1 and 2, and that aspect of claim 2 whereby there may be deletion, substitution or addition of certain amino acids.

Without acquiescing to the grounds for the rejection, claim 1 now recites an “isolated protein” in lieu of a “cerebral type organic anion transporter OAT3” and claim 2 has been cancelled.

Reconsideration and withdrawal of the rejection under 35 USC §112, 2nd paragraph, are requested.

Claims Rejections under 35 USC §101

Claims 1 and 2 are rejected under 35 USC §101 as allegedly being directed to non-statutory subject matter.

To clarify the features of the invention, claim 1 now recites an “isolated protein” and claim 2 has been cancelled.

Reconsideration and withdrawal of the rejection under 35 USC §101 are requested.

Rejection under 35 USC §102

Claims 1 and 2 are rejected under 35 USC §102(a) over Beier et al. (WO 97/42321, 13 Nov. 1997) ("Beier").

Claims 1 and 2 are rejected under 35 USC §102(b) over Sekine et al. (J. Biol Chem 272(3):18526-18529, 25 June 1997) ("Sekine").

The Office Action takes the position that the noted references anticipate the present claims "[b]ecause the instant specification fails to identify those structural or functional features that materially distinguish a 'cerebral organic anion transporter OAT3' from any other organic ion transporter expressed in a brain...".

Without acquiescing to the grounds for either of the §102 rejections, but in order to expedite allowance of the application, Applicant has amended the claims to further define the preferred features of the invention.

The Office Action expressly acknowledges that the "prior art of record did not disclose or suggest an isolated protein comprising the entire amino acid sequence presented in SEQ ID NO:2 or 4 of the instant application" (Office Action at page 7). Claim 1 has been amended accordingly and claim 2 is cancelled.

In view thereof, reconsideration and withdrawal of the rejections under 35 USC §102(a) and (b) are requested.

Small Entity Status

The undersigned Attorney submits that Applicant is entitled to Small Entity Status, which status is respectfully declared on its behalf.

CONCLUSION

In view of the above amendments and remarks, Applicant believes the pending application is in condition for allowance.

FEE AUTHORIZATION

No fee is believed to be due. The Commissioner is authorized to charge any fee asserted to be required in connection with this submission to our Deposit Account, No. 04-1105, Reference 55620(305032). Any overpayments should be credited to said Deposit Account.

Dated: May 24, 2011

Respectfully submitted,

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